Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling	)	WT Docket No. 16-421

COMMENTS OF THE CITIES OF SAN ANTONIO, TEXAS; EUGENE, OREGON; BOWIE, MARYLAND; HUNTSVILLE, ALABAMA; AND KNOXVILLE, TENNESSEE

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Table of Contents

The Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee (collectively, "Cities"), submit these comments in response to the Commission's Public Notice in this docket.

I. INTRODUCTION AND SUMMARY.

The Public Notice seeks comments on "potential Commission actions to help expedite the deployment [of] next generation wireless infrastructure."[1] The Commission also seeks comment on the issues raised by Mobilitie, LLC ("Mobilitie") in its Petition for Declaratory Ruling.[2]

Each of the Cities already acts to promote broadband deployment through all technologies. But unlike the Commission, the Cities must also consider and balance factors other than the needs of broadband providers; they must consider public safety, right-of-way ("ROW") capacity and congestion, unique local historic and scenic neighborhoods and parks, and the obligation that taxpayers receive adequate compensation for private commercial use of public property.

We therefore caution strongly against any FCC attempt in this proceeding to develop nationwide, one-size-fits-all standards for local processing of or action on small cell/DAS facility applications. Such standards would not in fact promote deployment, but would instead increase public safety risks, undermine the public's investment in the ROW, and thwart each municipality's ability to protect unique local attributes.

San Antonio, Eugene, Bowie, Huntsville, and Knoxville are a geographically, topographically and historically diverse group of local governments, and each has its own,

[1] FCC, Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies 1 (Dec. 22, 2016) ("Public Notice").

[2] *In re Promoting Broadband for All Ams. By Prohibiting Excessive Charges for Access to Pub. Rights of Way*, Petition for Declaratory Ruling (Nov. 15, 2016) ("Mobilitie Petition").

different experiences with wireless providers and siting processes. All share the goal of promoting the widespread availability of wireless services to their residents, businesses, and visitors. But that is not, and cannot be, the Cities' only goal. Nor should the Commission, either in this proceeding or elsewhere, hamstring the ability of local governments to respond to each of their unique ROW, land use, public safety, and public property needs and interests. No provision of the Communications Act authorizes such heavy-handed FCC intrusion into local affairs.

A. DESCRIPTION OF THE CITIES.

San Antonio, with approximately 1.3 million residents, is the second largest city in Texas, and the seventh largest city in the nation. Both landline and wireless broadband from multiple competitive providers are available throughout San Antonio. In fact, both landline and wireless broadband are far more ubiquitously and competitively available in San Antonio than in many, especially rural, areas across the nation with far less demanding, and in some cases nonexistent, ROW and zoning requirements. At the same time, pursuant to Texas law and the City Charter, San Antonio has, for over a century, imposed rent-based compensation on private entities that install facilities in the City's ROW, including ROW use by telecommunications, cable and broadband providers (among others). Indeed, ROW compensation from private sector telecommunications and cable providers is the third-largest source of City revenue, exclusive of the City's municipal utilities.

San Antonio has long recognized and promoted the benefits of broadband and wireless development; it has granted hundreds of collocation requests and has approved the installation of DAS and small cells. But the City also must balance its promotion of the deployment of these technologies with preservation of its rich historic resources. San Antonio has over 2000 individual landmarks, 27 different locally designated historic districts, 19 sites on the National

Register of Historic Places, and five historic missions with pending designations as UNESCO World Heritage Sites. The City has over 28 million visitors a year, and tourism is a significant part of the local economy. Because of the City's unique character and history, all building and other structural alterations (including wireless facilities) in historic and riverfront areas are subject to review and approval. Exhibit 1, attached, displays some of these historic and riverfront resources, as well as the incorporation of a small cell tower along San Antonio's Riverwalk.

Eugene is Oregon's second largest city, encompassing approximately 41.5 square miles, and home to over 160,000 people.[3] The City has a high percentage of professionals, with over one-third of the City's population having completed four or more years of college. Eugene is home to several colleges and universities, including the University of Oregon. Eugene's parks and open spaces provide tangible benefits to the City in areas such as water quality, flood protection, air quality, property values, and recreation.[4] The City's pristine viewsheds are protected under the City code, [5] which was amended in light of the Telecommunications Act of 1996 regarding the siting of wireless facilities.[6]

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[3] *About Eugene*, https://www.eugene-or.gov/1383/About-Eugene (last visited Mar. 6, 2017); QuickFacts: Eugene City, Oregon, https://www.census.gov/quickfacts/table/PST045215/4123850 (last visited Mar. 8, 2017).

[4] Earth Economics, *Nature's Value: An Economic View of Eugene's Parks, Natural Areas and Urban Forest* 2 (2015), https://www.eugene-or.gov/DocumentCenter/View/18659.

[5] *See* Exhibit 2 (attached) (showing Eugene and the viewshed protection of the vistas of Spencer Butte).

[6] In this regard, the City Code provides:

> Viewshed. The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the

Eugene has adopted and consistently applied its land use, zoning and ROW access ordinances, rules and policies in a manner designed to promote wireless and landline broadband infrastructure deployment while, at the same time, preserving the City's historic and aesthetic integrity, public safety, and fair and adequate compensation for use of City ROW and other property. Since the late 1990s, the City's land use code has contained provisions specifically encouraging collocation on existing towers, buildings, light or utility poles, and water towers.[7] Since adopting its wireless zoning ordinance in 1997, the City has granted over 240 wireless siting applications. Eugene typically works with an applicant until the designs requested are appropriate, safe, and lawful, and the process rarely gets to the point of needing to officially deny an application. AT&T has commended the City on its wireless siting permit procedures. *See* Exhibit 3, attached.

Bowie, located in Prince George's County, is Maryland's fifth largest city, with approximately 55,000 residents.[8] In convenient proximity to Baltimore, Annapolis, and Washington, D.C., Bowie encompasses about 18-square miles, which includes 1,100 acres set aside as parks or as preserved open space. Bowie has over 22 miles of paths and trails, and 75 ball fields. Numerous institutions of higher education and government facilities are located near Bowie. According to the Census Bureau's American Community Survey of 2012, 46% of Bowie's adult residents have a bachelor's degree or higher. The County, not the City, has land use authority covering the siting of wireless facilities on private property within the City. The City, however, has leased portions of its property to wireless providers since the 1990s, and there

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> transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.

Eugene, Or., Code § 9.5750(7)(j).

[7] *See id.* § 9.5750.

[8] *About Bowie*, http://www.cityofbowie.org/95/About-Bowie (last visited Mar. 6, 2017).

are currently thirteen wireless facilities installed on City property, all pursuant to lease agreements between the provider and the City. The City recently adopted an ordinance addressing the installation of small cell/DAS facilities in the ROW.

Huntsville, the seat of Madison County, is the fourth-largest city in Alabama with a population of approximately 180,000.[9] Within the Huntsville area, residents enjoy more than 27 miles of existing greenways and trails, as well as access to the Tennessee River, with an adopted Greenway Plan guiding the development of over 180 miles of interconnected canoe, pedestrian, biking, and hiking trails.[10] Technology, aerospace, and defense industries have a strong presence in Huntsville, with the Redstone Arsenal, NASA Marshall Space Flight Center, and Cummings Research Park ("CRP") located nearby.[11] As a city of professionals, nearly 40% of the City's adult population has completed four or more years of college, and there are a number of colleges and universities serving the Huntsville area, including the University of Alabama in Huntsville and Alabama A&M University.[12] Thanks to its highly educated, motivated and skilled workforce, Huntsville has been and continues to be "forward-looking." The continued presence and commitment of the aerospace and defense industry in the area and the development of new industry (including biotech, biomedical, and pharmaceutical), as well as the research parks and

[9] *Facts & Figures*, https://www.huntsvilleal.gov/business/city-of-huntsville/facts-figures-about-huntsville/ (last visited Feb. 28, 2017).

[10] Huntsville, Alabama, *Trails & Greenways*, https://www.huntsvilleal.gov/environment/parks-recreation/parks-and-nature/trails-greenways/ (last visited Feb. 28, 2017).

[11] *Facts & Figures*, https://www.huntsvilleal.gov/business/city-of-huntsville/facts-figures-about-huntsville/ (last visited Feb. 28, 2017).

[12] QuickFacts: Huntsville City, Alabama, https://www.census.gov/quickfacts/table/PST045216/0137000 (last visited Mar. 6, 2017).

educational institutions, all support—and in some cases even demand—advanced communications capabilities.[13]

Huntsville is not only forward-looking, it is also mindful of its past. The National Trust for Historic Preservation named Huntsville to its "2010 List of America's Dozen Distinctive Destinations."[14] Richard Moe, president of the National Trust for Historic Preservation, has said: "Huntsville has beautifully preserved and protected so many of the diverse stories of its past, from its southern culture and heritage to its role as 'America's Space Capital', and its citizens are not stopping there . . . . This designation recognizes not only their commitment to the past, but also their dedication to a sustainable future."[15]

Knoxville is Tennessee's third-largest city,[16] home to approximately 180,000 people,[17] and is the seat of Knox County. The City covers 104 square miles, and is situated in a valley between the Cumberland Mountains and Great Smoky Mountains.[18] The City is home to 83 parks and approximately 2,000 acres of park land,[19] and features 18 miles of downtown

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[13] A brochure about Huntsville's CRP, "one of the world's leading science and technology parks," notes: "CRP companies demand access to a dependable, state-of-the art telecommunications network. Huntsville was the first metro area in the USA to establish 100% digital switching and transmission facilities, and CRP companies are still among the first in the nation to access new telecom technologies." *In re Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No. 11-59, Reply Comments of the City of Huntsville, Alabama 3 n.6 (Sept. 30, 2011).

[14] *Id.* at 3 & n.8.

[15] *Id.* at 3-4 & n.9.

[16] *Demographics*, http://www.knoxvilletn.gov/visitors/knoxville_info/demographics/ (last visited Feb. 27, 2017).

[17] Conventions, Sports & Leisure International, *Market and Feasibility Analysis of the Knoxville Civic Auditorium and Coliseum: Appendix G, Key Demographic Metrics* G-1 (Dec. 17, 2015), http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/PublicAssemblyFacilities/kcacstudy/KCACReportAppendixG-KnoxvilleDemographics.pdf.

[18] *Demographics*, http://www.knoxvilletn.gov/visitors/knoxville_info/demographics/ (last visited Feb. 27, 2017).

[19] *Parks*, http://www.knoxvilletn.gov/government/city_departments_offices/parks_and_recreation/parks/ (last visited. Feb. 27, 2017).

greenways along and nearby the Tennessee River.[20] Nearly 30% of Knoxville's adult population has completed four or more years of college, while nearby Oak Ridge is home to one of the Department of Energy's seventeen National Laboratories, and Knoxville houses the main campus of the University of Tennessee.[21] The Development Corporation of Knox County encourages business development within the area, highlighting Knoxville's status as the nation's tenth-best city in which to do business, according to rankings released in 2008 by *Forbes* magazine.[22]

Knoxville and Knox County have a Wireless Communications Facility Plan that lists historic districts and sites, scenic vistas, and public parks as locations to avoid. If a wireless facility is to be located in any of these areas, collocation and stealth design requirements are required. There are currently 200 free-standing towers in Knox County equipped with cellular antenna rays. Of these towers, 5 are in the Town of Farragut, 73 are in the City of Knoxville, and 120 are in the unincorporated portion of the County.

B. EXPERIENCES AND INTERESTS OF THE CITIES.

Having long recognized the importance of promoting wireless and landline broadband infrastructure and service as a critical component of economic growth and development, the Cities have long supported the deployment of broadband. But the Cities strongly disagree with the apparent premise of both the Mobilitie Petition and the Public Notice that local government

[20] Kathleen Gibi, Greenways Add Options for Pedestrians and Bicyclists, Knoxville Parks & Recreation Guide, Oct. 22, 2015, at 5, http://knoxvilletn.gov/UserFiles/Servers/Server_109478/File/ParksRecreation/RecreationGuide2015.pdf.

[21] *Know Knoxville: Relocation*, http://www.knoxvillechamber.com/relocation (last visited Mar. 6, 2017).

[22] The Development Corporation of Knox County, *Knox County Profile: Commerce and Industry*, http://www.knoxdevelopment.org/CountyProfile/CommerceandIndustry.aspx (last visited Feb. 27, 2017).

wireless siting and ROW practices have represented any significant obstacle to the deployment of small cell/DAS or any other wireless facilities requiring Commission intervention at this time.

The Cities note their experience with incomplete or otherwise deficient applications slowing down (or preventing) deployment. Eugene, for example, has experienced delays in moving forward with applications due to changes in the applicant's staff contacts (accompanied by reorientation of newly assigned applicant staff) and applicant delays in responding to the City's requests about planned business operations. These requests have included such basic matters as seeking information about what legal entity will own the planned infrastructure, and what is the lawful name of the company seeking use of the ROW or the City's poles. Applicants are sometimes reluctant to provide the requested information to complete their application packages. These delays have impacted the City's development and finalization of master lease agreements with providers for use of ROW and City-owned poles for small cell/DAS installations. Additionally, in Eugene's experience, the applicant will often be quick to blame the City for delays when the delay is actually attributable to lack of information transfer taking place within the applicant's corporate offices.

The Cities also illustrate their own innovative developments to promote wireless technology deployment. For example, Eugene is in the process of reviewing concept plans for a standardized design for small cell/DAS attachments to be considered for collocated placement on City street light and traffic signal poles. Eugene anticipates that this standardized design, which will be required for use by all small cell providers seeking to attach to City poles, will help streamline the permitting process, as well as meet the City's aesthetic goals, by providing a consistent appearance for these types of installations in the ROW.

Knoxville, in conjunction with Knox County, is also in the process of adopting small cell/DAS guidelines to be used to review small cell/DAS projects in the ROW. And staff from the Knoxville-Knox County Metropolitan Planning Commission, the City of Knoxville, and Knox County are working to update the wireless communications ordinance for the City and County, which will include provisions for small cell/DAS on private property. The City has entered into license agreements with several companies for installing underground fiber backbones in the City and is in the process of creating an agreement for overhead facilities.

As noted above, Bowie recently adopted an ordinance amending its code to permit, under certain circumstances, the installation of wireless facilities in the ROW.

The Cities have had varied experiences with wireless siting providers and procedures. Generally, the Cities have approved applications to construct wireless facilities, often expending uncompensated municipal staff and other resources to work cooperatively with applicants. And some of the Cities have developed, or are in the process of developing or revising, procedures to best promote the deployment of small cell/DAS technology in their jurisdictions while, at the same time, protecting public safety and local land use interests and obtaining adequate compensation for private commercial use of public property. Local governments are motivated to expedite deployment, finding ways that will work best given unique local circumstances and concerns.

And that point warrants emphasis: Each City, like each community nationwide, has unique topography, history, land use concerns, state law requirements, ROW infrastructure, and municipal property. As a result, any federalized "one-size-fits-all" approach to small cell siting—or indeed, any form of commercial facility siting—would be counterproductive. In the experience of the Cities, the application process is often positive and cooperative, and when there

is delay, it is most likely to be on the applicant's end, not the Cities'. Moreover, the FCC's past intrusions in this area have not been helpful to applicants or local governments. After the Commission's 2009 *Shot Clock Order,*[23] many local governments had to implement more rigid wireless siting application procedures to ensure that an application is complete within the window dictated by the FCC, and at least one applicant has complained about this loss of flexibility.

The promulgation of additional rigid nationwide rules to attempt to control continuously evolving local processes would threaten the progress made by local governments, such as the Cities. And that could lead to more, not less, litigation between municipalities and the wireless industry.

II. COMMENTS.

A. SECTION 253 DOES NOT APPLY TO LOCAL GOVERNMENT DECISIONS REGARDING THE PLACEMENT, CONSTRUCTION, AND MODIFICATION OF PERSONAL WIRELESS SERVICE FACILITIES.

The Commission cannot, as Mobilitie requests,[24] rely on Section 253 to provide the small cell/DAS industry with any additional preemptive relief regarding the siting of personal wireless service facilities. The plain language of Section 332(c)(7)(A) bars the application of Section 253 to local government decisions regarding the placement, construction, and modification of personal wireless service facilities, including small cell/DAS facilities, that are covered by Section 332(c)(7).[25]

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[23] *In re Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling (Nov. 18, 2009) ("*Shot Clock Order*").

[24] Mobilitie Petition at 1. *See also* Public Notice at 12.

[25] The Commission did not reach this issue in the *Shot Clock Order*. *See Shot Clock Order*, ¶ 67.

1. The Plain Language of Section 332(c)(7)(A) Forbids Application of Section 253 to "Limit or Affect" Local Authority Over Wireless Siting Decisions.

The Commission made clear in its 2014 *Wireless Siting Order*[26] that small cell/DAS is a "personal wireless service," and small cell/DAS facilities are "personal wireless service facilities" within the meaning of 47 U.S.C. § 332(c)(7). Section 332(c)(7)(A) provides: "[E]xcept as provided in this paragraph, *nothing in this chapter* [*i.e.*, the Communications Act] *shall limit or affect* the authority of a State or local government . . . over decisions regarding the placement, construction, and modification of personal wireless service facilities."[27] Thus, by its terms, the limitations in Section 332(c)(7)(B) represent the Act's exclusive limitations on State and local government authority over the placement, construction and modification of personal wireless service facilities, including small cell/DAS facilities.[28]

"Nothing in this chapter" means that Section 253 cannot "limit," or even so much as "affect," state and local authority over small cell/DAS siting decisions. The provision's legislative history confirms that the purpose of Section 332(c)(7)(A) was to make clear that the limitations of Section 332(c)(7)(B) were the sole limitations on local authority over the placement, construction, and modification of personal wireless service facilities:

> The conference agreement creates a new [section 332(c)(7)(A)] which prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the

[26] *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, Report and Order ¶¶ 270, 271 (Oct. 17, 2014) ("*Wireless Siting Order*").

[27] 47 U.S.C. § 332(c)(7)(A) (emphasis added).

[28] To be sure, the subsequently-enacted 47 U.S.C. § 1455 (Section 6409 of the 2012 Spectrum Act) represents an exception to this rule, but that does not alter the conclusion that Section 332(c)(7)(A) bars application of Section 253 to small cell/DAS facilities.

> limited circumstances set forth in [the balance of section 332(c)(7)(B)]. [29]

Any interpretation of Section 253 as providing some additional avenue for Communications Act intrusion upon state and local authority over "the placement, construction, and modification" of small cell/DAS or other wireless facilities would fly in the face of unambiguous Congressional intent.[30]

Section 253 is a provision of general applicability to telecommunications services by its terms. It does not apply to information service or to infrastructure developers that do not actually provide telecommunications services. And where precluded by other parts of the Act — as in Section 332(c)(7)(A)—Section 253 simply does not apply, yielding to the more specific provisions in Section 332(c)(7) that cover personal wireless facilities.

2. Policy Concerns Support Not Applying Section 253 to Wireless Siting.

In addition to being contrary to Section 332(c)(7)(A)'s plain language and legislative history, extending Section 253 to reach local wireless facility siting matters falling within Section 332(c)(7)(A) would be unsound as a policy matter. There is no indication that Congress intended to favor wireless providers over all other telecommunications service providers by furnishing them—and them alone—with their own unique double set of preemptive benefits and remedies in the Telecommunications Act of 1996. When Congress intends to give additional

[29] H.R. Rep. No. 104-458, at 207-08 (1996) (Conf. Rep.).

[30] *See City of Arlington v. FCC*, 668 F.3d 229, 250 (5th Cir. 2012) ("Section 332(c)(7)(A) states Congress's desire to make § 332(c)(7)(B)'s limitations the only limitations confronting state and local governments in the exercise of their zoning authority over the placement of wireless services facilities, and thus certainly prohibits the FCC from imposing restrictions or limitations that cannot be tied to the language of § 332(c)(7)(B)."), *aff'd*, 133 S. Ct. 1863 (2013).

protections to wireless providers and the promotion of wireless facilities deployment, it has said so explicitly, as it did in Section 6409 of the 2012 Spectrum Act.[31]

Further, ROW access, addressed in Section 253(c), has far greater relevance to landline service than the wireless service covered by Section 332(c)(7). That is, the ROW is unquestionably an essential facility for landline service, and lack of access to ROW therefore is an inherent barrier to entry for landline service. That is not so with wireless service. To the contrary, wireless facilities can be—and historically almost exclusively have been—placed on private property. Unlike landline facilities, newer, smaller wireless facilities that could be placed in the ROW have plentiful non-ROW-based alternatives: the provider could negotiate with adjacent private property owners for sites on existing buildings, collocation or modification of existing facilities on private property, or the erection of monopoles on private property. Eugene has, in fact, had more small cell/DAS applications for private property installations than for installations in the ROW.[32]

Thus, although small cell/DAS facilities *can* be placed in the ROW, providers have other facility installation alternatives that are inherently unavailable to a landline telecommunications network provider. It therefore makes sense for Section 253(c)'s concern with ROW access to apply to landline service and not to wireless service. To be sure, wireless providers may believe that, due to state law or perhaps hoped-for beneficence from the Commission in this proceeding, they may be able to obtain lower-cost, subsidized access to the ROW than they can obtain from private property owners. But nothing in Section 332(c)(7) suggests any intent by Congress to

[31] *See, e.g.*, 47 U.S.C. § 1455 (Section 6409(a) of the Spectrum Act).

[32] Eugene has had eight applications submitted for permitting wireless facilities in 2016 in the ROW, and these are the only ones submitted within the last five years (with the exception of an occasional pole contract amendment to replace an attachment).

skew the private property market for wireless facility siting by granting wireless providers federally-mandated, subsidized access to state and local ROW that does not belong to the providers or the federal government. Small cell/DAS applications seeking ROW access also confront local governments with the added complication of needing to ensure that safeguards governing the installation of additional facilities in the ROW are in place.

As an example, Maryland state law generally permits telephone companies to construct lines and erect poles supporting these lines along and on a road, street or highway, subject to consent and local franchise requirements.[33] "Wireless providers," however, are explicitly excluded from the Maryland law definition of telephone company and thus are not entitled to this privilege.[34] Small cell/DAS facility constructors, as well as personal wireless service providers, cannot have it both ways: They cannot claim the benefits of exemption from state PUC regulation under 47 U.S.C. § 332(c)(3), yet simultaneously claim the special ROW access privileges of landline service providers that do not enjoy the benefit of §332(c)(3)'s exemption from state PUC regulation.

B. SECTIONS 332(c)(7) AND 253 DO NOT APPLY TO LOCAL GOVERNMENTS ACTING IN THEIR PROPRIETARY CAPACITY.

A municipality, like any other landowner, controls the use of its own property. In the context of Section 332(c)(7), the law is clear that a decision whether or not to allow construction on a municipality's own property "does not regulate or impose generally applicable rules on the placement, construction, and modification of personal wireless service facilities . . . and so the substantive limitations imposed by [Sections 332(c)(7)(B)(i) and (iv)] are inapplicable."[35]

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[33] Md. Code Ann., Public Utilities § 8-103, § 1-101(ll).

[34] *Id.* § 1-101(ll)(2).

[35] *Omnipoint Commc'ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 200 (9th Cir. 2013) (quotation marks omitted); *see also Bldg. & Constr. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of*

Indeed, neither Section 253 nor Section 332(c)(7) "preempt[s] nonregulatory decisions of a local governmental entity . . . acting in its proprietary capacity."[36] Thus, neither provision applies to small cell/DAS or other wireless requests for access to municipal buildings, towers, light poles, or utility poles. Construing Section 332(c)(7) or Section 253 to limit a municipality's ability to permit or deny access to municipal property for wireless siting would render either provision an impermissible interference with and burden on the municipality's control of its own property.[37]

Whether the proprietary exception to Sections 332(c)(7) and 253 applies to wireless requests to access the local ROW in a particular jurisdiction depends on whether or not the local ROW is subject to the municipality's proprietary control.[38] This is a matter of state or local property law concerning the status of the ROW, which varies not only from state to state, but also from locality to locality within a state, and sometimes even from street to street within a locality.[39] This is therefore not an area where there is, or legally can be, uniformity, or on which the Commission legally can or should attempt to impose uniformity. The Commission simply lacks the authority, under Section 332(c)(7) or any other provision of law, to rewrite or remold the state property law status of local ROW that belongs neither to the FCC nor any other arm of the federal government.

Mass./R.I., Inc., 507 U.S. 218, 226-27 (1993) ("When a State owns and manages property . . . it must interact with private participants in the marketplace. In so doing, the State is not subject to pre-emption by the [federal statute], because pre-emption doctrines apply only to state *regulation*." (emphasis in original)).

[36] *Sprint Spectrum, L.P. v. Mills,* 283 F.3d 404, 421 (2nd Cir. 2002) ("[W]e conclude that the Telecommunications Act does not preempt nonregulatory decisions of a local governmental entity or instrumentality acting in its proprietary capacity[.]"); *Omnipoint Commc'ns, Inc.*, 738 F.3d at 200; *see also N.Y. State Thruway Auth. v. Level 3 Commc'ns, LLC*, No. 1:10-cv-0154, 2012 U.S. Dist. LEXIS 45051, at *18-19 (N.D.N.Y. March 30, 2012) (considering proprietary exemption in the context of Section 253); *Coastal Commc'ns Serv., Inc. v. City of New York*, 658 F. Supp. 2d 425, 443 (E.D.N.Y. 2009) same).

[37] *See Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency,* 535 U.S. 302, 335-36 (2002).

[38] Municipal decisions regarding access to other municipal property, such as light poles, are clearly proprietary activities, and accordingly, there can be no serious suggestion that either Section 332(c)(7) or Section 253 applies to those types of decisions.

[39] *See, e.g., Ill. Bell Tel. Co. v. Vill. Of Itasca*, 503 F. Supp. 2d 928, 934-35 (N.D. Ill. 2007) (discussing Illinois law concerning municipal interests in public streets).

C. THE "PROHIBIT OR HAVE THE EFFECT OF PROHIBITING" PROVISIONS OF 332(c)(7) AND 253(a) REQUIRE NO FURTHER COMMISSION INTERPRETATION.

The Commission asks whether it should "further clarify any issues addressed in its 2009 and 2014 rulings or . . . fine-tune or modify any of its past statutory interpretations in light of current circumstances."[40] The Commission notes that both Sections 253(a) and 332(c)(7) contain restrictions on a State or local governments' ability to take certain actions that "prohibit or have the effect of prohibiting" the provision of specified services.[41]

Although they use similar language, the two provisions are different in scope. Section 253(a)'s scope encompasses interstate and intrastate telecommunications services.[42] Section 332(c)(7), in contrast, encompasses only "personal wireless services."[43] And as noted above, there is another very significant difference between the two provisions: Section 332(c)(7) applies to local decisions affecting the siting of small cell/DAS facilities; Section 253 does not.

The Cities urge the Commission not to further interpret either "prohibition" provision at this time. The Commission asks, for example, if "an action that prevents a technology upgrade" has the effect of prohibiting "the provision of service."[44] But that is not a question that can be answered in a factual vacuum; it would depend upon the nature of the alleged "technology upgrade," the context of the relevant application, the size and nature of the facilities proposed, and their proposed location. This is a fact-specific inquiry best left to the courts. If the "technology upgrade" is itself a "telecommunications service" not previously provided that

[40] Public Notice at 10.

[41] *Id.*

[42] 47 U.S.C. § 253(a).

[43] 47 U.S.C. § 332(c)(7)(B)(i).

[44] Public Notice at 11.

cannot be provided at all without the upgrade, then a reviewing court might find a prohibition of service. The Commission, however, is ill-suited to address, and should not address, these kinds of intensely fact-specific and context-specific issues.

D. FCC SHOULD NOT PROMULGATE A NEW SHOT CLOCK FOR SMALL CELL SITING APPLICATIONS.

The Commission asserts that "[t]he presumptive timeframes established in the *2009 Declaratory Ruling* may be longer than necessary and reasonable to review a small cell siting request," but acknowledges that "if small cell siting applications are filed dozens at a time, those presumptive timeframes may not be long enough."[45] The Commission also seeks comment on whether there should be a different shot clock for processing a "batch" of siting requests, as well as what should qualify as a "batch."[46]

The 2009 *Shot Clock Order's* original shot clocks—one for collocations applications, and the other for non-collocation applications—were built on a "two sizes fits all" presumption. Adding yet another new and different shot clock as a presumptively reasonable time frame for small cells would directly contradict the *Shot Clock Order's* rationale that Section 332(c)(7)'s "reasonable period of time" can be reduced to a single nationwide standard. Likewise, setting yet another shot clock for batch applications would attempt to impose uniform definitions and timeframes in an area where local circumstances should control.

The Commission has already clarified in the 2014 *Wireless Siting Order* that "to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to

[45] *Id.*

[46] *Id.* at 12.

applications related to other personal wireless service facilities."[47] The Commission should go no further here.

1. Further Federal Intrusion on the "Reasonable Period of Time" Only Highlights the Unreasonableness of Presumptive Nationwide Definitions of "Reasonable Period of Time."

A nationwide standard for "reasonable period of time" under Section 332(c)(7) is inconsistent with the statute's language and legislative history. The statutory language directs that reasonableness be evaluated "taking into account the nature and scope of such request,"[48] attributes that will, of course, necessarily vary with each request. Similarly, the legislative history clarifies that the time period would "be the usual period under such circumstances."[49] "It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision."[50]

That the industry now urges the Commission to fashion still more federal shot clocks based on still more categories of siting applications shows the fundamental folly of attempting to impose presumptively reasonable nationwide timeframes onto what is inherently a local and fact-specific process. At some point, multiple FCC shot clocks go from being an interpretation of Section 332(c)(7)(B)'s "reasonable period of time" language to a Commission-imposed nationwide land use code for wireless siting, something that Section 332(c)(7)(A), as well as Section 332(c)(7)'s legislative history, make clear Congress never intended to occur.

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[47] *Wireless Siting Order*, ¶ 270.

[48] 47 U.S.C. § 332(c)(7)(B)(ii).

[49] H.R. Rep. No. 104-458, at 208 (1996) (Conf. Rep.).

[50] *Id.*

We submit Commission imposition of any new, additional, shot clocks would take us well past that point. Piling shot clock upon shot clock on local governments would serve only to create traps for unwary or resource-strapped local governments that wireless applicants would no doubt exploit for their commercial advantage. We seriously doubt this Commission would even consider imposing so many multiple and tight deadlines on the commercial communications service providers that the Act empowers it to regulate. So why should the Commission be doing that to local governments?

Moreover, a separate shot clock for small cell/DAS applications presupposes that there is a standard definition of what is a "small cell/DAS" facility. But there is not. In fact, the "small" in "small cells" refers more to the coverage area of the facility than the facility's size. Mobilitie's proposed 80 to 120-foot monopoles, for instance, are definitely *not* "small." Rather than further intruding into inherently fact-specific local matters, the Commission should respect the remaining discretion of state and local governments to meet the needs of different applications and their communities within the existing presumptively reasonable—and industry friendly—timeframes of the *Shot Clock Order*.

2. A Nationwide Definition of "Batch" Applications Would Be Unworkable and Open the Door to Gaming.

Different local governments will have different experiences with, and preferences for handling, a batched set of siting applications. The local government should be free to determine how best to treat a set of applications—whether as a set or as individual applications—because each local government is in the best position to assess its staff size and resources, and thus its ability to take advantage of potential efficiencies from the batching of siting applications. The very questions that the Public Notice asks illustrate how fact- and context-specific any

efficiencies to be gained from batch processing will be.[51] The Commission is ill-equipped to intrude on these determinations, and it would therefore be inappropriate to promulgate any binding, one-size-fits-all definition of "batch" or new presumptively reasonable timeframes for acting on "batches" of applications. The intent of the *Shot Clock Order* was to avoid an examination into the individual circumstances of the facility proposed and the proposed site. Establishing another set of shot clock rules depending on where the facilities are to be placed, the type of equipment, how many placements, or the proximity of these proposed placements to one another, would be directly contrary to that intent.

Different local governments will have different staff and budget limitations that would impact processing of applications. Bowie, for instance, has not received any "batch" submittals to date. Eugene has received five to ten applications submitted in "batch," which it handles on a first-come, first-served basis for wireless permitting in the ROW. Eugene reviews all applications on a site-by-site basis, with the time frame for a complete wireless application from review to approval anticipated to be four to six weeks. On the other hand, Knoxville has received applications from small cell providers for three or four small cell towers in the ROW, and reviewed those applications together. These experiences illustrate the varied practices of local governments in dealing with batch submittals (as well as the differences in what is considered a "batch"). Any attempt by the Commission to fashion a one-size-fits-all nationwide approach would be unhelpful at best.

[51] *E.g.*, Public Notice at 12 (asking, "Should there be multiple tiers depending on how many poles or antennas are involved?").

E. FAIR AND REASONABLE COMPENSATION UNDER SECTION 253(c) IS NOT RESTRICTED TO COST OR COST-BASED RATES.

The Commission should not attempt to construe what is "fair and reasonable compensation" under Section 253(c) here, or to adjudicate Section 253(c) ROW disputes in a vacuum. Congress intended such disputes to be left to courts, not the FCC. And for good reason: ROW compensation and management requirements necessarily reflect a balancing of several vital local governmental interests, such as public safety, efficient transportation, historical preservation, and fiscal health. This balancing is far outside the realm of the FCC's expertise.

Even if it were appropriate for the Commission to construe the meaning of "fair and reasonable compensation," Congress clearly intended that such compensation may include rent-based fees. Additionally, Mobilitie's positions to the contrary run afoul of legal and practical issues.

With regard to the separate issue of application fees, local governments incur costs that providers have shown no interest in paying, and the Commission should not intervene to erode a local government's ability to recoup the additional costs imposed upon it by wireless applicants. These costs include hours of staff-time cost in preliminary reviews and workflow processes. The "normal" permit fee typically does not cover provider-attributable delays and requests that are not, in fact, normal, and this puts a further burden on municipal public works department staffing and budgets.

1. Local Governments are Not Restricted to Cost-Based Fees by Section 253(c).

a. FCC Does Not Have Jurisdiction over 253(c) ROW matters.

As an initial matter, the Commission does not have the authority to restrict local government fees under Section 253(c). Section 253(d) gives the Commission authority to address alleged violations of Sections 253(a) and (b), but ROW matters relating to the Section 253(c) safe harbor are explicitly omitted from Section 253(d).[52] This was no accident. Rather, it was a deliberate compromise, the product of a Senate floor amendment sponsored by Senator Gorton that was explicitly intended to prevent the FCC from doing what the Mobilitie Petition proposes: to intrude into Section 253(c) ROW compensation and management matters. Specifically, "any challenge to [local ROW requirements must] take place in the Federal district court in that locality and . . . the Federal Communications Commission [should] not be able to preempt [local ROW requirements]."[53]

b. Section 253(c)'s "Fair and Reasonable" ROW Compensation Includes Rent-Based Compensation.

Even if the Commission did have jurisdiction to regulate ROW compensation under Section 253(c), the language and legislative history of Section 253(c) leave no doubt that ROW compensation need not be restricted, or closely related to, costs. Further, any such restriction would embroil courts, the FCC, local governments, and telecommunications providers in the very kinds of tedious and invasive ROW fee ratemaking proceedings that Congress intended to avoid with Section 253(c).

Section 253(c)'s plain language, "fair and reasonable compensation," certainly does not connote merely the reimbursement of costs. For example, *Black's Law Dictionary* defines

[52] 47 U.S.C. § 253(d).

[53] 141 Cong. Rec. S8213 (daily ed. June 13, 1995) (statement of Sen. Gorton).

"compensation" as "[r]emuneration and other benefits received in return for services rendered."[54] This does not connote mere reimbursement of costs. And "just compensation" and "adequate compensation" are defined as "[usually] the property's *fair market value*, so that the owner is theoretically no worse off after the taking."[55]

An examination of other uses of similar phrases supports interpreting "compensation" to extend beyond cost-based fees. For example, the Fifth Amendment's Takings Clause contains the phrase "just compensation." The law is clear that this "compensation" means fair market value, not mere reimbursement of costs.[56] And the Takings Clause is not limited to private parties, but clearly extends to compensation to state and local governments as well.[57] In enacting Section 253(c), Congress is presumed to be aware of these interpretations of similar language.[58]

Further, longstanding precedent stands for the proposition that non-cost-based franchise fees are a permissible form of rent for private commercial use of the ROW. In the directly analogous context of cable television franchise fees, the Fifth Circuit held that the 5% franchise fee permitted by 47 U.S.C. § 542 is "essentially a form of rent: the price paid to rent use of public right-of-ways."[59] Other courts have reached the same conclusion for over a hundred years, in the context of both local telephone and local cable television franchises.[60] This case

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[54] *Compensation*, Black's Law Dictionary (9th ed. 2009).

[55] *Just Compensation*, Black's Law Dictionary (9th ed. 2009) (emphasis added); *Adequate Compensation*, Black's Law Dictionary (9th ed. 2009).

[56] *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984).

[57] *Id.* at 31 & n.15.

[58] *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978).

[59] *City of Dallas v. FCC*, 118 F.3d 393, 397 (5th Cir. 1997).

[60] *E.g., City of St. Louis v. W. Union Tel. Co.,* 148 U.S. 92, 98 (1893) (franchise fee is rent for use of local rights-of-way); *City of Plano v. Pub. Utils. Comm'n*, 953 S.W.2d 416, 420 (Tex. App. 1997) (gross receipts-based franchise fee is rent for use of local rights-of-way); *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 854 P.2d 348, 360 (N.M. 1993) (same); *City of Montrose v. Pub. Utils. Comm'n of Colo.*, 629 P.2d 619, 624 (Colo. 1981), *related proceeding,* 732 P.2d 1181 (Colo. 1987) (same); *City of Richmond v. Chesapeake & Potomac Tel. Co. of Va.,* 140 S.E.2d 683, 687 (Va. 1965) (same); *Pac. Tel. & Tel. Co. v. City of L.A.*, 282 P.2d 36, 43 (Cal. 1955) (same); *Telesat*

law was, of course, the backdrop against which Congress enacted Section 253(c): municipalities have been entitled to rent in the form of franchise fees from private business, such as telecommunications providers, that place permanent, extensive facilities in the ROW.

And Section 253(c)'s legislative history confirms that conclusion: Congress intended Section 253(c) to preserve the historical practice of rent-based ROW fees. Debate on the Barton-Stupak amendment in the House of Representatives is the only place in the legislative history of Section 253 where the meaning of ROW compensation was discussed.[61] The debate began with Representative Barton, one of the amendment's sponsors, who made clear that one of the primary purposes of the amendment was to prevent the federal government from telling local governments how to set compensation levels for local ROW:

> [The Barton-Stupak amendment] explicitly guarantees that cities and local governments have the right to not only control access within their city limits, *but also to set the compensation level for the use of that right-of-way* . . . . The Chairman's amendment has tried to address this problem. It goes part of the way, but not the entire way. *The Federal Government has absolutely no business telling State and local government how to price access to their local right-of-way*.[62]

Representative Fields then rose in opposition to the amendment, complaining that it would allow municipalities to impose on telecommunications providers what he felt were excessive ROW fees in the range of "up to 11 percent."[63] The amendment's other sponsor, Rep. Stupak, defending rent-based fees, stated:

Cablevision, Inc. v. City of Riviera Beach, 773 F. Supp. 383, 407 (S.D. Fla. 1991) (same); *Grp. W Cable, Inc. v. City of Santa Cruz,* 669 F. Supp. 954, 962-63, 972-74 (N.D. Cal. 1987), *rehearing denied,* 679 F. Supp. 977, 979 (1988) (same); *Erie Telecomms., Inc. v. City of Erie,* 659 F. Supp. 580, 595 (W.D. Pa. 1987), *aff'd on other grounds,* 853 F.2d 1084 (3d Cir. 1988) (same).

[61] *See N.J. Payphone Ass'n v. Town of West New York*, 299 F.3d 235, 246-47 n.7 (3d Cir. 2002) (relying on the Barton-Stupak floor debate to interpret Section 253(c)); *TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 80 (2d Cir. 2002)(relying on Barton-Stupak amendment's elimination of "parity" provision to construe Section 253(c)).

[62] 141 Cong. Rec. H8460 (daily ed. Aug. 4, 1995) (remarks of Rep. Barton) (emphasis added).

[63] *Id.* at H8461 (remarks of Rep. Fields).

> Mr. Chairman, we have heard a lot from the other side about gross revenues. You are right. The other side is trying to tell us what is best for our local units of government. Let local units of government decide this issue. Washington does not know everything. You have always said Washington should keep their nose out of it . . . . This is a local control amendment, supported by mayors, State legislatures, counties, Governors. [64]

Finally, and perhaps most revealingly, Representative Bliley spoke in opposition to the amendment, making clear that neither the amendment, nor even the "parity language" that it replaced, was intended to preempt rent-based fees:

> I commend the gentleman from Texas [Mr. Barton], I commend the gentleman from Michigan [Mr. Stupak], who worked tirelessly to try to negotiate an agreement.
>
> The cities came back and said 10 percent gross receipts tax. Finally they made a big concession, 8 percent gross receipts tax. What we say is charge what you will, but do not discriminate. If you charge the cable company 8 percent, charge the phone company 8 percent, but do not discriminate. That is what they do here, and that is wrong. [65]

Two conclusions are apparent. *First*, both proponents *and* opponents of the Barton-Stupak amendment agreed that the amendment permitted rent-based ROW fees and eliminated federal second-guessing of the reasonableness of locally-set fees. *Second*, the House did not share Representative Field's distaste for rent-based fees; after hearing his concerns, the House overwhelmingly adopted the Barton-Stupak amendment by a 338 to 86 vote.[66]

Thus, construing Section 253's "fair and reasonable compensation" provision as not encompassing rent-based fees would improperly subvert the Congressional intent that is evident in both Section 253(c)'s plain language and its legislative history.

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[64] *Id.* (remarks of Rep. Stupak).

[65] *Id*. (remarks of Rep. Bliley).

[66] *Id.* at H8477 (recorded vote).

2. The Positions Urged by Mobilitie are Inconsistent with Reasonable Business Practices.

The Mobilitie Petition takes positions inconsistent with reasonable business practices and expectations. We feel confident, for example, that wireless providers' rates, as well as Mobilitie's charges to its customers, are not limited to an amount only sufficient to "recoup" their incremental costs. Mobilitie does not explain why taxpayers should be shortchanged in compensation for their property for the benefit of industry's private shareholders. Mobilitie's argument that compensation should be limited to an amount that allows the locality to "recoup the costs reasonably related to reviewing and issuing permits and managing the rights of way"[67] also would turn every Section 253(c) dispute into a ratemaking proceeding. And its logic would also mean that almost all "compensation" for use of property or for goods or services today—including the wireless industry's own rates—is excessive and therefore not "fair and reasonable."

More generally, Mobilitie confuses application fees (almost always cost-recovery based) with ROW fees, as well as with light pole attachment fees. Application fees are generally set to recover the cost of reviewing an application. ROW fees, on the other hand, are rental charges for use of the ROW. And light pole attachment fees are also rent for attaching to a light pole. ROW fees and light pole attachment fees are separate rent charges for separate uses of different kinds of property; even in states where ROW or franchise fees are limited by statute, light pole attachment fees are not.

Mobilitie's suggestion that a fee is impermissibly discriminatory if it is not as low as the lowest rate charged to any competitor in the locality is divorced from reality.[68] Franchise and other ROW agreements are entered into at different times and under different circumstances. It

[67] Mobilitie Petition at 7.

[68] *Id.* at 7, 31-34.

is unreasonable to expect that the rent for use of municipal ROW or light poles should never change but should instead be locked into a rate charged 5, 10, or 100 years ago. This is certainly not how property is priced in the private sector, and Mobilitie offers no reasoned explanation as to why state and local governments, and their taxpayers, should perpetually be locked into below-market rates set long ago, just so that private profit-making users of public property can pay less.

Moreover, if, as Mobilitie urges, a ROW fee were to be truly cost-based, it would not meet Mobilitie's own proposed "non-discrimination" standard. A truly cost-based ROW fee would have to vary over time, by provider, and by location, as the scope and nature of ROW use, and the costs incurred, would be different in each case, and also would certainly vary over time.

Mobilitie's request that ROW compensation be "publicly disclosed by such government"[69] is already satisfied by state open records laws and local practices. The Commission should decline to take action on Mobilitie's request to impose additional, specific requirements beyond what state open records laws already require.[70] Section 253(c) should not, and cannot, be used as the basis to require local governments to spend additional taxpayer funds to package information already publicly available via state open records laws in whatever format Mobilitie happens to prefer.

3. The Commission May Not, Consistent with the Fifth Amendment, Compel Access to Local Right-of-Way or Other Municipal Property.

Compelling state and local governments to grant wireless providers access to municipal property—such as the ROW, light and utility poles, or water towers—would be a taking of

[69] 47 U.S.C. § 253(c).

[70] Mobilitie Petition at 34-35.

property within the meaning of the Fifth Amendment.[71] Such a taking would require, at minimum, just compensation in order to survive a facial challenge under the Fifth Amendment.[72] As discussed above, "just compensation" is fair market value.[73] The Commission therefore may not restrict fees local governments may charge for use of the ROW under Section 253(c) to anything less than fair market value.

4. The Tenth Amendment Prohibits the Commission from Commandeering State and Local Property for a Federal Purpose.

The Supreme Court has made clear that the Tenth Amendment and the principles of federalism it embodies prohibit the federal government from commandeering state or local government resources to accomplish federal goals.[74] The same principle bars the federal government from commandeering state and local ROW and other municipal property in pursuit of any Commission regulatory program to promote small cell/DAS deployment.

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[71] *Ark. Game & Fish Comm'n v. United States*, 133 S. Ct. 511, 518 (2012); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); *Gulf Power Co. v. United States*, 187 F.3d 1324, 1328-29 (11th Cir. 1999).

[72] *See Gulf Power Co.*, 187 F.3d at 1331 ("a reasonable, certain, and adequate provision for obtaining compensation [must] exist at the time of the taking" (quoting *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985))).

[73] *Just Compensation*, Black's Law Dictionary (9th ed. 2009).

[74] *See Printz v. U.S.*, 521 U.S. 898, 925 (1997) ("[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs."). *See also New York v. United States*, 505 U.S. 144, 156-57 (1992).

III. CONCLUSION

The Commission should deny the Mobilitie Petition and refrain from any further action in this docket.

Respectfully submitted,

/s/ *Tillman L. Lay*

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March 8, 2017

EXHIBIT 1

San Antonio Riverwalk. The elevator in the background is the location of a small cell tower, approved through the City's review process.

St. Paul Square. A commercial historic district.

River Walk Museum Reach.

Mission Concepcion.

EXHIBIT 2

View of Eugene and the view shed protection of the vistas of Spencer Butte.

EXHIBIT 3

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December 20, 2012

City of Eugene
Planning and Development Department
Sarah Medary, Executive Director AIC
99 W 10th Ave.
Eugene, OR 97401

VIA EMAIL AND FIRST CLASS MAIL

RE: AT&T Broadband Data Network Launch (4G LTE)

Dear Sarah:

On November 16, 2012, AT&T launched a major upgrade to its wireless network, known as 4G Long Term Evolution ("LTE"), in the City of Eugene. We wanted to take a moment to thank you – the City's leadership, professional and administrative staff – for your important contribution towards a successful launch.

Over the past year, AT&T has worked closely with the Planning and Development Department to obtain permits and approvals to upgrade all of its cell sites spread throughout the City. This was quite an effort – the volume and complexity of the permitting program could not have been accomplished without the efforts of your staff, particularly Katharine Kappa, Charlotte Curtis, Gabe Flock, Mike McKerrow, and each member of the review team.

AT&T's investment in the 4G LTE network will provide substantial economic benefits to the City for years to come. Millions of dollars have been invested throughout the region in permitting fees, staff, design, construction and equipment, directly benefitting the City's economy. AT&T's 4G LTE network provides data speeds to customers up to ten times faster than 3G, allowing the city to be more competitive across the nation and the world.

Again, we appreciate your efforts and support. Please extend our thanks and congratulations to your entire staff.

Sincerely yours,

Adam Grzybicki
President, Oregon
External Affairs

cc: Hon. Kitty Piercy, Mayor
Jon Ruiz, City Manager
Mike Sullivan, Community Development Manager